

Y.A.M. TENGKU ALI IBNI ALMARHUM
SULTAN SULAIMAN

a

v.

KERAJAAN NEGERI TERENGGANU DARUL IMAN

HIGH COURT MALAYA, KUALA TERENGGANU
DATO' HAJI ABDUL MALEK BIN HAJI AHMAD J
[CIVIL SUIT NO. 21-52-92]

b

27 NOVEMBER 1995

ADMINISTRATIVE LAW: *Declaratory judgments - Unreasonable delay in seeking relief - Effect - Whether plaintiff disentitled to any remedy.*

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CONSTITUTIONAL LAW: *Ascension to the Sultanate of Trengganu - Plaintiff appointed Sultan of Trengganu in 1942 by Japanese military administration - Whether appointment valid - Appointment of a Sultan - Whether a prerogative of Council of Regency - Laws of the Constitution of the State of Trengganu 1911.*

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LIMITATION: *Rights acquired under a repealed law - Whether subject to limitation - Application by plaintiff for a declaration that he was the Sultan of Trengganu from 1942 to 1945 - Evidence adduced that plaintiff was appointed Sultan by Japanese military administration in September 1942 but was deposed by the British in November 1945 - Application filed in 1992 - Whether claim time barred - Whether bad for laches - Limitation Act 1953 s. 6 - Public Authorities Protection Act 1948 s. 2 - Public Authorities Protection Enactment 1937 s. 2.*

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The plaintiff is the eldest son of the 13th Sultan of the State of Trengganu, Sultan Sulaiman Badrul Alam Shah ibni Almarhum Sultan Zainal Abidin III. In his capacity thus the plaintiff was entitled to, and has been receiving a monthly allowance of RM480. In this suit, filed in 1992, the plaintiff is seeking a declaration that he was the Sultan and ruler of the State of Trengganu from 26 September 1942 to 5 November 1945, that, being an ex-ruler, was entitled to payment of an allowance for life at a monthly rate of RM1,500 effective November 1945, and to a residence that befitted his station in life in accordance with Chapter 18, Laws of the Constitution of the State of Trengganu, 1911 (the 1911 Constitution). By his claim the plaintiff in essence contended that he was rightfully appointed to the throne upon the death of his late father on 25 September 1942 by the Jemaah Menteri which consisted, among others, of the Chief Justice, the Menteri Besar and the Ketua Istiadat.

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The defendant, the Government of the State of Trengganu, opposed the claim and in the event tendered various contemporaneous documents which showed that the appointment of the plaintiff as Sultan was made by the Japanese Military administration, and was not in conformity with the State Constitution.

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- a* The defendant argued that the power to appoint the Sultan was vested in the Council of Regency or Jemaah Pangkuan Negeri and not the Jemaah Menteri as alleged. These apart, it was also contended that the claim was time barred and was bad for laches. Before the learned Judge the primary issues that arose were:
- b*
1. Whether the purported ascension of the plaintiff was in accordance with the 1911 Constitution.
 2. Whether the claim, including the claim for arrears of life allowance and for a suitable residence, were barred by limitation or bad for laches.
- c* **Held:**
- d* [1] On the evidence, this Court can only conclude that the plaintiff did ascend the throne of the State of Trengganu on 26 September 1942 up to 5 November 1945 when he was deposed by the British. By the gazette Cahaya Timur No. 38 dated 28 September 1942 the plaintiff, after his father's death, had clearly been appointed as the new Regent, and soon thereafter, was bestowed the title Sultan by the Supreme Commander of the Japanese forces in Malaya.
- e* [2] However, on the date the plaintiff was appointed the Sultan and ruler of the State, the State Executive Council and the Jemaah Pangkuan Negeri, the bodies empowered to make the appointment, were not in existence. Under such circumstance, the plaintiff could not have been validly appointed under the State Constitution.
- f* [3] The Limitation Enactment 1937 was applicable to the State of Trengganu until it was repealed by the present Limitation Act 1953 and therefore applicable to the instant case. However, although s. 77 of the Interpretation Acts 1948 and 1967 provides that a right acquired under a repealed law is not affected by repeal, such accrued right is always subject to limitation.
- g* Thus, the period applicable here is six years which means that the plaintiff ought to have filed the action not later than 5 November 1951. Section 34 of the Limitation Act 1953 provides that nothing in the Act shall enable any action to be brought which was barred before the commencement of the Act by any Enactment repealed by the Act.
- h* [4] The concept of limitation is that there must be an end to litigation. In the instant case, it cannot be disagreed that 47 years is a bit too long for the defendant to wait to be sued. The delay is so clear that it disentitles the plaintiff to any remedy. The plaintiff had also accepted all the allowances given to him and had not objected to anything, and this indicated that he
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**Y.A.M. Tengku Ali Ibni Almarhum Sultan Sulaiman v. Kerajaan
Negeri Terengganu Darul Iman**

[1996] 1 CLJ

Abdul Malek Ahmad J

651

had chosen to waive his rights. The plaintiff's claim is thus barred by limitation and laches, and consequently not maintainable by virtue of acquiescence, waiver and estoppel. a

[Claim dismissed].

Cases referred to (as listed by the Court): b

Pembangunan Maha Murni Sdn. Bhd. v. Jururus Ladang Sdn. Bhd. [1986] 2 MLJ 30

Scott v. Baker [1969] 1 QB 659

Chapman v. Michaelson [1909] 1 Ch. 238.

Dr. Mahesan a/l Subramaniam & 2 Ors. v. Ponnusamy a/l R. Rajoo & 3 Ors. [1994] 3 CLJ 438

In the Hasting's Peerage Case [1804-41] VIII Clark & Finnelly ER Vol. 6-8 144 c

The Fitzwalter Peerage Case [1844] X Clark & Finnelly ER Vol. 6-8 945

Yeo Chu Hui v. Lim Cheng Jin (f) & Anor. [1993] 1 AMR 18

Ronex Properties Ltd. v. John Laing Construction Ltd. & Ors. (Clarke, Nicholls & Marcel (a firm), third parties) [1982] 3 All ER 961

Yew Bon Tew v. Kenderaan Bas Mara [1982] 3 All ER 833 d

Pearce v. Secretary of State for Defence & Anor. [1988] 2 All ER 348

National Land Finance Co-operative v. Director General of Inland Revenue [1993] 2 AMR 52

Keith Sellar v. Lee Kwang; Tennakoon v. Lee Kwang [1980] 2 MLJ 191

Sim Seoh Beng @ Sim Sai Beng & Anor. v. Koperasi Tunas Muda Sungai Ara Berhad [1995] 1 MLJ 292 e

Great West Saddlery Company Limited v. The King; Attorney General for Canada [1921] 2 AC 91

Utah Construction & Engineering Pty., Ltd. & Anor. v. Pataky [1965] 3 All ER 650

In re The Initiative And Referendum Act [1919] AC 935

Henry Trading Co. Ltd. v. Harun [1966] 2 MLJ 281

Goh Ya Tian v. Tan Song Gou & Ors. [1981] 2 MLJ 317 f

Subramaniam v. Public Prosecutor [1956] 22 MLJ 220

Leong Hong Khie v. Public Prosecutor & Tan Gong Wai v. Public Prosecutor [1986] 2 MLJ 206

Goh Beng Seng v. Dol bin Dolah [1970] 2 MLJ 95

Lam Choon & Co. v. Lim Yam Hong, Trading as Lee Hong & Co. [1931] SSLR 96 g

Violet Beatrice Mukthalata De Alwis nee Jayatilaka v. Adambarage Edward De Alwis Yeo Giak Choo (f) [1947] MULR 141

Loo Keck Leong v. Public Prosecutor [1992] 2 MLJ 177

The Planters Loans Board v. Madam S. Mangalam [1951] MLR 44

Ellin Anak Masing v. The King [1948] SC 1

In re Shaik Ramzan bin Abdullah Basarawi, Deceased [1951] 17 MLJ 93 h

Cheang Sunny v. Ramanathan Chettiar & Ors. [1948] 14 MLJ 182

Lee Sau Kong v. Leow Cheng Chiang [1961] 27 MLJ 17

Ratna Ammal v. Tan Chow Soo [1967] 1 MLJ 296

Chor Phaik Har v. Farlim Properties Sdn. Bhd. [1994] 4 CLJ 285

Anchom binte Lampong v. Public Prosecutor, Hussin bin Mandot v. Public Prosecutor [1940] MLJ Rep. 18 i

Hamilton Gell v. White [1922] 2 KB 422

Abbott v. The Minister for Lands [1895] AC 425

- a** *Director of Public Works and Another v. Ho Po Sang and Others* [1961] 2 All ER 721 PC
Yong Hon Chong v. Harbans Singh [1949] 15 MLJ 99
Muthuraku v. Kuala Lumpur Municipality Workers Trade Union [1972] 1 MLJ 165
Manggai v. Government of Sarawak & Anor. [1970] 2 MLJ 41
Loh Kooi Choon v. Government of Malaysia [1977] 2 MLJ 187
- b** *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.* [1976] 2 MLJ 83; [1977] 2 MLJ 18 FC
B. Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 28 MLJ 169
Haji Hussin bin Haji Ali & Ors. v. Datuk Haji Mohamed bin Yaacob & Ors.; and Connected Cases [1983] 2 MLJ 227
- c** *Tio Chee Hing & Ors. v. Government of Sabah* [1981] 1 MLJ 207 FC
Chung Khiaw Bank Ltd. v. Tio Chee Hing [1987] 2 MLJ 701 FC
Mariam bte. Shaik Mohd. Omar v. Ong Chin Poh [1994] 3 MLJ 419
Riches v. Director of Public Prosecutions [1973] 2 All ER 935 CA
Tengku Ali ibni Almarhum Sultan Ismail v. Kerajaan Negeri Terengganu Darul Iman [1994] 2 MLJ 83
- d** *Re Estate of Choong Lye Hin, Decd.; Choong Gim Guan v. Choong Gim Seong* [1977] 1 MLJ 96 FC
Kilduff v. Wilson and Others; Coventry v. Wilson and Others [1939] 1 AER 429.
Hogg v. Scott [1947] 1 KB 759.
Semantan Estate [1952] Sdn. Bhd. v. Collector of Land Revenue Wilayah Persekutuan [1987] 2 MLJ 346
- e** *Haji Abdul Rahman v. Government of Malaysia & Anor.* [1966] 2 MLJ 174
J.S. Drinkhall v. Nam Hue Motor Hiring [1955] 21 MLJ 119
Nagendra Nath Dey and another v. Suresh Chandra Dey and Others AIR [1932] PC 165
- f** *Lee Lee Cheng v. Seow Peng Kwang* [1958] 24 MLJ 271
Maqbul Ahmad and Others v. Onkar Pratap Narain Singh and Others AIR [1935] PC 85
R.B. Policies at Lloyd's v. Butler [1950] 1 KB 76
St. John Peerage Claim [1915] AC 282
Bagher Singh v. Chanan Singh & Anor. [1961] 27 MLJ 328
- g** *A. Chandrasegaram v. The Prime Minister of the Federation of Malaya* [1958] 24 MLJ 278
Ee Kim Kin v. The Collector of Land Revenue, Alor Gajah [1967] 2 MLJ 89
Saminathan v. Pappa [1981] 1 MLJ 121
Inwards and Others v. Baker [1965] 2 QB 29
Emile Erlanger and Others v. The New Sombrero Phosphate Company and Others [1878] 3 HL 1218
- h** *Habib Bank Ltd. v. Habib Bank A.G Zurich* [1981] 1 WLR 1265
Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors. [1986] 1 MLJ 362 PC
Loh Wai Kong v. Government of Malaysia & Ors. [1978] 2 MLJ 175; [1979] 2 MLJ 33 PC
- i** *Birkett v. Hayes* [1982] 2 All ER 710
The London, Chatham and Dover Railway Company v. The South Eastern Railway Company [1893] AC 429
Haji Mohamed Dom v. Sakiman [1956] 22 MLJ 45

**Y.A.M. Tengku Ali Ibni Almarhum Sultan Sulaiman v. Kerajaan
Negeri Terengganu Darul Iman**

[1996] 1 CLJ

Abdul Malek Ahmad J

653

- Lian Ann Lorry Transport & Forwarding Sdn. Bhd. v. Govindasamy* [1982] 2 MLJ 232 **a**
- Anjalai Ammal & Anor. v. Abdul Kareem* [1969] 1 MLJ 22
- Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government and Others* [1959] 3 All ER 1
- Anisminic Ltd. v. The Foreign Compensation Commission and Another* [1969] 1 All ER 208 **b**
- Commissioners of Customs and Excise v. Cure & Deeley Ltd.* [1962] 1 QBD 340
- Kannan & Anor. v. Menteri Buruh dan Tenaga Rakyat & Ors.* [1974] 1 MLJ 90
- London Borough of Ealing v. Race Relations Board and Another* [1971] 1 All ER 424
- Tong Lee Hwa & Anor. v. Lee Yoke San* [1979] 1 MLJ 24 **c**
- Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn. Bhd.* [1979] 1 MLJ 135
- Chin Choy v. Public Prosecutor* [1955] 21 MLJ 236
- Teper v. Reginam* [1952] 2 AER 447
- Mohamed bin Allapitchay & Ors. v. Reg* [1958] 24 MLJ 197
- Ratten v. Reginam* [1971] 3 All ER 801 **d**
- Liow Siow Long. v. Public Prosecutor* [1970] 1 MLJ 40
- Balasingham v. Public Prosecutor* [1959] 25 MLJ 193
- Public Prosecutor v. Yuvaraj* [1969] 2 MLJ 89
- Guaranty Trust Company of New York v. Hannay & Company* [1915] 2 KB 536
- Barnard and Others v. National Dock Labour Board and Another* [1953] 1 AER 1113
- Ellis v. Duke of Bedford* [1899] 1 Ch. 494 **e**
- Attorney General of Hong Kong, The v. Zaayah Wan Chik & 3 Ors.* [1995] 2 AMR 1974
- Malaysia Shipyard and Engineering Sdn. Bhd. v. Bank Kerjasama Rakyat Malaysia Bhd.* [1985] 2 MLJ 359
- NKM Holdings Sdn. Bhd. v. Pan Malaysia Wood Bhd.* [1987] 1 MLJ 39 **f**
- Imperial Garments Sdn. Bhd. v. Luculent Shipping Company of Panama & Ors.* [1982] 1 MLJ 281
- Yong Hon Chong v. Harbans Singh* [1949] 15 MLJ 99
- Perumal a/l Manickam v. The Malaysian Co-operative Insurance Society Limited* [1995] 2 CLJ 639
- New Zealand Insurance Co. Ltd. v. Ong Choon Lin* [1992] 1 MLJ 199 **g**
- United Malayan Banking Corp. v. Syarikat Perumahan Luas Sdn. Bhd.* [1991] 3 MLJ 181
- Legislation referred to:**
- Evidence Act 1950, s. 114(c)
- Interpretation Acts 1948 and 1967, s. 77 **h**
- Limitation Act 1953, ss. 6, 6(1)(a) & (d), 34
- Limitation Enactment 1937
- Public Authorities Protection Act 1948, s. 2
- Public Authorities Protection Enactment 1937, s. 2
- For the plaintiff - S. Sivasubramaniam (Mura Raju & Rajoo Dashina with him);* **i**
M/s. Mura Raju & Co.
- For the defendant - Idrus bin Harun; State Legal Adviser, (Othman Abdullah, Senior Federal Counsel with him)*

- a* Watching brief for the Jemaah Pangkuan Negeri - Zaki Tun Azmi (Wan Farid bin Wan Salleh with him); M/s. Adnan & Wee

JUDGMENT

Abdul Malek Ahmad J:

- b* In his statement of claim filed on 11 February 1992, the plaintiff had pleaded that he was the Sultan and ruler of the State of Terengganu from 26 September 1942 to 5 November 1945 when he was deposed by the British for opposing the Malayan Union. He had further pleaded that despite recognising him as the Sultan and the ruler of the State during the relevant period, the defendant had failed to pay him the monthly allowances and other privileges as stipulated under the State Constitution.

- c* He had therefore prayed for a declaration that he was the Sultan and ruler of the State of Terengganu from 26 September 1942 to 5 November 1945, that the defendant pay him an allowance for life at a monthly rate of RM1,500 from November 1945 and all arrears up to the date of payment, interest at eight per cent per annum for all arrears, that the defendant provide a residence befitting his status, costs and other relief the Court deemed fit.

- d* The amended statement of defence of the defendant dated 7 February 1995 had among other things, stated that they were opposing the claim as the appointment of the plaintiff as Sultan and ruler of the State of Terengganu was made by the Japanese military administration and did not conform with the State Constitution, that he was not entitled to the payment of any allowances and to be provided with any residence, that his appointment was made pursuant to a repealed Enactment, and that his claim was barred by limitation as provided by s. 2 of the Public Authorities Protection Act 1948 and s. 6 of the Limitation Act 1953.

At the outset, the parties had agreed that the issues in dispute were:

- g* (a) whether the purported ascension of the plaintiff to the Sultanate of Trengganu on 25 September 1942 was in accordance with the Constitution of the Way of Illustrious Sovereignty No. 1 of 1911 (the 1911 Constitution);
- (b) whether the plaintiff's claim for declaratory judgment in prayer 9.i. is barred by limitation and/or is bad for laches;
- h* (c) whether the plaintiff's claim for arrears of life allowance in prayer 9.ii. and the claim for a suitable house of residence in prayer 9.iv. are barred by limitation and/or bad for laches;
- (d) whether the plaintiff's claims in prayers 9.ii. and 9.iv. come within Chapter 18 of the 1911 Constitution;
- i* (e) whether the plaintiff can now claim under a law which are (is) purported to have been repealed; and

(f) whether the 1911 Constitution can be changed, altered, broken or forgotten by means of Orders in Council dated 21 January 1948 and 9 August 1950. *a*

In his evidence, the plaintiff had said that his father, Sultan Sulaiman, had passed away on 25 September 1942 and he was appointed in his late father's place by the Jemaah Menteri which consisted of the Chief Justice the Dato Biji Sura, his father's younger brother the Tengku Paduka Raja, the Menteri Besar Dato Jaya Perkasa, the Ketua Istiadat the Tengku Pekerma and Tengku Hitam Hussein, among others. The death was in the afternoon and the same night the Jemaah Menteri had assembled to choose the successor. The plaintiff said he was not aware of the meeting but insisted that the Japanese officials were not present. *b*
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He was summoned by the Jemaah Menteri at 6 a.m. the following morning and was told that he had been selected to replace his father. They had a short meeting after which he led the funeral procession for the burial rites. He stressed that none of the Japanese officials were in the palace but they only paid their respects from outside the palace. As for his appointment, he maintained that he was rightfully appointed under the State Constitution being the eldest son of his late father. *d*

He admitted receiving a letter of appointment from the Japanese Governor in Singapore together with the other ruling Sultans. When the Japanese occupation ended, the British Military Commander Brigadier William accompanied by Lieutenant Colonel Headley as interpreter had approached him to surrender the State to the British as the four States of Terengganu, Kelantan, Kedah and Perlis were not recognised by the British. A week later, the Sultans of the other states were appointed to the throne but he was never even informed that he had been deposed until replaced by the Tengku Paduka Raja Tengku Ismail. *e*
f

As for his claim, he explained that he had done so as he was old, unemployed with no skills, and his many descendants had no opportunity to study in England. He asked for sufficient maintenance and a personal residence. Under cross-examination, he stated that he had heard of the Jemaah Pangkuan Negeri but did not know if it existed since 1911, the year of the State Constitution, which provided that the Sultan was to be appointed by the Jemaah Pangkuan Negeri. He said he was appointed by the Jemaah Menteri not the Jemaah Pangkuan Negeri or the Japanese administration. Under reexamination, he confirmed that he was appointed by the Jemaah Menteri, and the Jemaah Pangkuan Negeri was not in existence at that time. *g*
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The plaintiff's younger brother also gave evidence on his behalf. He said that he had left Terengganu in 1954 to be the aide-de-camp of the Sultan of Kedah until 1975 when he retired. On 25 September 1942, he was living in Kuala Terengganu when his father died and the members of the State Executive Council had held a meeting to choose the successor. He had attended as an *i*

- a* observer and present at the meeting were the Menteri Besar Tengku Setia Raja, Sultan Ismail who subsequently replaced the plaintiff, Tengku Wangsa, Tengku Pekerma and others. The plaintiff and the Japanese officials were not present. The elder brother of his late father wanted to be the Sultan but this was opposed by Sultan Ismail who said only the sons of the Sultan were eligible. As the eldest son, the plaintiff was selected. The next morning, the plaintiff was called to attend to be officially informed of the appointment. The Japanese officials were also present for the funeral. The official proclamation of the new Sultan was made to all present.

- c* Under cross-examination, he stated that the meeting was of the Jemaah Menteri and the State Executive Council. He did not agree that they were not in existence then as the Japanese administration had taken over. He also did not know if the Menteri Besar and the State Secretary had been sacked by the Japanese administration. He said that from 1911 to 1942 it was the Jemaah Menteri which was empowered to appoint the Sultan and not the Jemaah Pangkuan Negeri which came into being only when Sultan Ismail became Sultan. He did not agree that the Al-Halli Wal-Akdi or the Jemaah Pangkuan Negeri had existed since 1911.

- e* The plaintiff's third witness was the State Secretary who retired in the early sixties. He said he had moved to Kuala Terengganu on 1 January 1942 and the Japanese administration had taken over Singapore and the then Malaya. He was made to head the Forestry Department. When Sultan Sulaiman passed away, he heard the plaintiff had become the Sultan and he had met the plaintiff as Sultan for official forestry matters.

- f* Both the plaintiff and his brother were recalled by consent at the subsequent hearing. When asked by his Counsel why he had filed the action only in 1992, the plaintiff had said that at that time the Sultan who replaced him was in power and if he had sued, he would have been banished from the state. Also, he had no money. He admitted he was being paid an allowance of RM480 per month. On recall, the plaintiff's brother had denied that the plaintiff was only appointed Regent but not Sultan.

- h* The defendant elected not to adduce any evidence and relied only on the documents. As the State Constitution was in Jawi, leading learned Counsel for the plaintiff had asked for a long adjournment to file their written submissions which was agreed to by the learned State Legal Adviser.

- i* In his written submissions, learned Counsel for the plaintiff had touched on the advanced ages of all three witnesses for the plaintiff and asked the Court to consider the long passage of time and its effect on their power to recall. However, it was his view that there was a plethora of documentary evidence to be gleaned from the reference material preponderating towards the plaintiff's action so as to sustain it at its least on a balance of probabilities more so when the defendant, somewhat surprisingly, had decided not to call any witness.

Learned Counsel had also traced the historical setting starting from the Japanese forces landing in Kelantan on 8 December 1941 and advancing into and occupying all the other states in the then Malaya. At that time, Sultan Sulaiman Badrul Alam Shah ibni Almarhum Sultan Zainal Abidin III was its reigning thirteenth Sultan. He passed away on 25 September 1942 and the plaintiff as his eldest son became the fourteenth Sultan of the State of Terengganu.

The plaintiff had carried out his duties in co-existence with the Japanese occupation forces but following the horrific bombings of Hiroshima and Nagasaki, the Japanese Government buckled and agreed to accept the surrender terms of the Potsdam Declaration and officially surrendered on 14 August 1945. By the following month, the British were back in Malaya and were in haste to get the various rulers of all the States to sign the Malayan Union treaties. On 5 November 1945, a group of persons purporting to have authority in the State led by Da Omar Mahmud, the Menteri Besar, decided to depose the plaintiff from the throne and to appoint Tengku Paduka Raja Sultan Ismail ibni Almarhum Sultan Zainal Abidin in his place.

On the first issue, learned Counsel for the plaintiff had stated that it could be safely assumed that the members from the two ranks of Ministers and Chiefs making up the Jemaah Pangkuan Negeri or the Council of Regency would meet and decide on the matter of succession on the night of 25 September 1942 in their capacity as members thereof even though it can be said that the State Executive Council had been abolished or suspended. There was therefore a rebuttable presumption in all the circumstances of this case that the plaintiff's appointment to the throne of the State of Terengganu on that night was legal which is reflected in s. 114(c) of the Evidence Act 1950.

The fact that the plaintiff had to be proclaimed or installed as Sultan had never been stipulated in the State Constitution and learned Counsel for the plaintiff had argued that the defendant cannot raise this in contention as these are not legal requirements but mere customary practices carried out when and if circumstances permit. The plaintiff's ascension was during the occupation of the State by a foreign power and the primacy of the Sultanate and all its attendant manifestations would be pushed down in terms of importance to make way for the trappings of power of the occupying forces.

As to the defendant's suggestion that the plaintiff was actually only appointed as acting Sultan, learned Counsel for the plaintiff had maintained that there was no provision in the State Constitution for an acting Sultan. Even if the plaintiff had been described as such, he added, it did not detract from the fact that he was the lawful successor to the throne.

From the oral evidence, learned Counsel for the plaintiff had reiterated that there was a meeting of the Jemaah Pangkuan Negeri and Majlis Mesyuarat Negeri or State Executive Council on the night of the former Sultan's demise

- a* which had appointed the plaintiff as the next Sultan. There was no Japanese official present or in the vicinity and there was no evidence that somehow the Japanese administration had influenced the outcome. There were two Japanese officials present the next day but they were there only to pay their respects. Learned Counsel for the plaintiff had added that even if it is said
- b* that it was the Japanese administration that had appointed the plaintiff, that would still be a valid appointment under the State Constitution and the syariah, the plaintiff being the eldest son of the late ruler.

As to being deposed by the British, learned Counsel for the plaintiff had asked the following questions

- c*
- (a) if the plaintiff had not been lawfully appointed Sultan, why then was there a necessity to have him removed?
 - (b) would it not have done just as nicely, perhaps even better, to have ignored the so-called appointment and installed the successor in the
- d*
- (c) if the State Executive Council had been abolished or suspended, who were these people who could purport to have the plaintiff removed as Sultan?

- e* The learned State Legal Adviser submitted that there was no necessity for the defendant to call any witness as their rebuttal of the plaintiff's case was in the form of documentary evidence which were by agreement admitted in evidence as bundles A to G. There was therefore no necessity to prove the said documents citing the cases of *Henry Trading v. Harun* [1966] 2 MLJ 281 and *Goh Ya Tian v. Tan Song Gou & Ors.* [1981] 2 MLJ 317. In any
- f* case, he added, the material witnesses who could testify were the Ministers and members of the State Executive Council who the plaintiff had alleged had appointed him as Sultan but they had all passed away. In the result, the defendant had no one to call.

- g* As for the learned Counsel for the plaintiff's allegation that the defendant had tampered with the official and governmental records in particular the gazette notifications, the learned State Legal Adviser had retorted that they had no clear and conclusive evidence and the blank spaces in the said gazette
- h* notifications do not necessarily mean or raise the inference that they had been tampered with or words deleted therefrom.

- With regard to the plaintiff's ascension to the throne, the learned State Legal Adviser had said that the plaintiff must prove he is the heir apparent not merely that he was the eldest son. Further, the power to appoint the Sultan
- i* had been conferred on the Council of Regency or Jemaah Pangkuan Negeri also known in Arabic as Al-Halli Wal-Akdi consisting of the Ministers and members of the State Executive Council and the plaintiff has to prove that he

was appointed by the Jemaah Pangkuan Negeri. The defence contention was that he was appointed by the Japanese military administration. The plaintiff's averment that he was appointed by the Jemaah Menteri was not sufficient in the circumstances as the State Constitution clearly states that the appointing body was the Jemaah Pangkuan Negeri. The testimony of the plaintiff's younger brother, he added, as regards the relevant meeting on the night of the death was hearsay as he was only present as an observer and it was based on what he had heard. In any case, the learned State Legal Adviser had argued that it was strange that there was no official record of the purported meeting and the decision of the State Executive Council of the purported appointment and that there was no written proclamation of the plaintiff as Sultan by the State Executive Council.

On the contrary, the State Legal Adviser had submitted that at pages 8 to 12 of Bundle F, the official record published two days after the event shows that the plaintiff was only appointed as "Pemangku Sultan bagi sementara" or "Regent for the time being" in the presence of the Governor on 26 September 1942 before the funeral. There is also the official record to show that the plaintiff was conferred the title Sultan on 30 September 1942 by the Syuchokan or Governor as stated in the Cahaya Timur published on 5 October 1942. There are several other extracts from various materials at pages 3, 9 and 21 of Bundle A and pages 26 and 28 of Bundle C to indicate that the plaintiff was appointed by the Japanese administration and not the Jemaah Pangkuan Negeri. As far as the defendant was concerned, the purported meeting on the eve of the funeral was to appoint the plaintiff as Regent. The plaintiff had also not proved, according to the State Legal Adviser, whether there was a sufficient quorum as required by the State Constitution for the alleged meeting.

It is also the submission of the learned State Legal Adviser that from the various gazettes, it is clear that the Ministers, State Executive Council and Jemaah Pangkuan Negeri had been effectively stripped of their powers by the Japanese administration. By Gazette No. 73 at page 112 of Bundle C dated 29 April 1942, it had been stated that the Japanese Government had taken over the administration. By Gazette No. 78 dated 1 June 1942 at pages 1 to 3 of Bundle D, the Japanese military administration had changed the constitution of the Government when they established their own system of government headed by the Governor. The same gazette also announced the closure of the offices of the Menteri Besar and the State Secretary. By Gazette No. 79 also dated 1 June 1942 at page 113 of Bundle C, it had been announced that the Menteri Besar and the State Secretary had ceased to hold office. All these evidence as to the non-existence of the relevant bodies is strengthened by the letter dated 14 November 1943 written by the plaintiff to the Thai Military Commissioner requesting for the State Executive Council to be reinstated and the appointments to be made of the Ministers and State Executive Council on 15 December 1943.

- a* Having considered the plaintiff's oral evidence, the lengthy written submissions of learned Counsel for the plaintiff and the learned State Legal Adviser, the documents tendered and the relevant authorities, it was my finding, and this is not disputed, that the plaintiff did ascend the throne of the State of Terengganu on 26 September 1942 up to 5 November 1945 when he was deposed by the British.

- b* As regards the first issue to be decided, I had considered the fact that an official installation did not take place although a proclamation had been made in the gazette Cahaya Timur and installations had taken place for Sultans for that State before and after the plaintiff. I had also taken into consideration that the official installation need not take place at the time of the appointment and in the circumstances of this case was not really possible because of the emergency.

- c* It must be emphasised that by the gazette Cahaya Timur No. 38 dated 28 September 1942, the plaintiff had been described as the eldest son of the late Sultan who had been appointed as the new Regent while waiting for the consent and order of the Japanese Government.

- d* The appointment as gazetted had been made before His Excellency the Governor of the State of Terengganu, heads of Government departments, royalty and others and the speech of the Japanese Governor to the plaintiff on 30 September 1942 as to the appointment was on the basis that the Supreme Military Commander of the Japanese forces in Malaya had specially considered the matter and had ordered his excellency the Governor to bestow the title of Sultan to the plaintiff for an unspecified period conditional upon changes taking place subsequently. Apart from that, there is no other record as to the appointment of the plaintiff and as to who were present at the time of the appointment except for the testimony of the plaintiff and his younger brother.

- e* In the State of Terengganu gazette dated 29 April 1942, the official proclamation was that the Malay States had been occupied by the Japanese Government. By another gazette dated 1 June 1942, the offices of the Menteri Besar and the State Secretary had been closed and Tengku Seri Setia Raja, the Menteri Besar and Dato Jaya Perkasa, the State Secretary, had ceased to function in their respective posts. The State Executive Council was reconstituted by the Siamese Government only on 7 July 1943.

- f* It follows that on the date the plaintiff was appointed the Sultan and ruler of the State of Terengganu, the State Executive Council and the Jemaah Pangkuan Negeri were not in existence and the plaintiff could not have been validly appointed under the State Constitution. As such, the answer to the first issue can only be in the negative and the other five issues, as agreed, would not arise for consideration.

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Despite my finding on the first issue, it may be appropriate to touch on the other issues raised particularly the issues of limitation and laches. Learned Counsel for the plaintiff had said that s. 6 of the Limitation Act 1953 (hereinafter “the LA”) does not bring a claim for declaratory relief within its ambit and s. 2 of the Public Authorities Protection Act 1948 (hereinafter “the PAPA”) appears to be intended to protect officers of government in the execution of their statutory duty and does not cover a case like the present. However, he conceded that this is subject to the Court’s discretion whether or not to grant the application on this basis.

Why did it take the plaintiff so long? The plaintiff had explained that he could not make the move because others were now in authority and he himself could not find the services of lawyers able and willing to take on the daunting task as it involved taking on the State Government, and the British at one period of time, and revive the controversy surrounding his removal which would certainly upset the present ruling house. He was also faced with monetary problems. However, the climate today is different to enable him to make the claim.

The State Legal Adviser, however, submitted that the PAPA came into force only in 1948 when it repealed the Public Authorities Protection Enactment 1937 (hereinafter “the PAPE”). Under s. 2 of the PAPE, the plaintiff had only three months to bring the suit but the PAPA extended it to twelve months. This period was further extended to thirty six months in 1974. However, the State Legal Adviser’s contention was that at the time of the plaintiff’s removal, only the PAPE applied and he should have filed his action before 5 February 1946. Although s. 77 of the Interpretation Acts 1948 and 1967 provides that a right acquired under a repealed law is not affected by the repeal, such accrued right is always subject to limitation. Even if it is held that the PAPE does not apply but the PAPA does, the action is still obviously out of time.

The State Legal Adviser had also stated that the defendant did not succeed in their application to strike out the claim as limitation under the PAPA was not pleaded while limitation under the LA was held subject to exception. The limitation issue was also not raised as a ground of appeal before the Supreme Court which heard the relevant appeal as regards the refusal to strike out the claim as it proceeded purely on the issue of jurisdiction and *forum non conveniens*. It is settled law, he added, that the Court will not make a declaratory judgment where there has been unreasonable delay or where a claim is statute barred. It follows that where a declaratory judgment is refused on the ground of limitation, any claim for arrears of pay or allowances is also barred.

Similarly, the Limitation Enactment 1937 (hereinafter “the LE”) was applicable to the State of Terengganu until it was repealed by the present LA on 19 February 1953 and therefore applicable to the instant case. The period

a applicable is six years which expired on 5 November 1951 and s. 34 of the LA provides that nothing in the Act shall enable any action to be brought which was barred before the commencement of the Act by any Enactment repealed by the Act.

b Even if the LA applies, the suit is time barred under s. 6(l)(a) and (d). The claim is not subject to exceptions in the LE or LA like fraud or disability which postpones the limitation to the date such fraud is discovered or disability ceases. In the consequence, all claims for ancillary relief must also fail.

c The concept of limitation is that there must be an end to litigation. And no one can disagree that forty seven years is a bit too long for any defendant to wait to be sued. The delay is so clear that it disentitles the plaintiff to any remedy. In the meantime, the plaintiff had accepted all the allowances given to him. He had never objected to anything indicating that he had chosen to waive his rights. If the plaintiff had any problems with the Sultan who replaced him, that Sultan has passed away on 20 September 1979 but the plaintiff waited

d another thirteen years before coming to Court. In fact, he could and should have sued the Colonial Government then if he had done so before the country's independence in 1957. After all these, it was my opinion that the plaintiff's claim is barred by limitation and bad for laches, and consequently not maintainable by virtue of acquiescence, waiver and estoppel.

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I had accordingly dismissed the plaintiff's claim with costs.

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